



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Date:	Enrolled	Bill No:	<u>Senate Bill 618</u>
Tax Program:	Property	Author:	Wolk
Sponsor:	Author	Code Sections:	RTC 402.1
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This bill requires that a “solar-use easement,” which this bill creates, be treated as an enforceable restriction for which the assessor must consider its effect on the value of land.

ANALYSIS

CURRENT LAW

Enforceable Restrictions. Revenue and Taxation Code (RTC) Section 110(a) provides that in determining a property’s fair market value the effect of any enforceable restrictions must be considered. Additionally, RTC Section 402.1(a) provides that in the assessment of land, the assessor must consider the effect upon the value of any enforceable restrictions to which the use of the land may be subjected. RTC Section 402.1 expressly lists specific types of restrictions that must be considered. One type of restriction listed is a recorded contract with a governmental agency. However, the list of restrictions delineated in RTC Section 402.1 is not an exhaustive list of all possible governmentally imposed restrictions that could be considered as an enforceable restriction.

Property Taxation: California Land Conservation Act (Williamson Act). Under the Williamson Act, landowners may enter into contracts with participating cities and counties to restrict their lands to agricultural or open-space uses. The contract must be for a minimum term of 10 years, and contracts are automatically renewed each year unless other action is taken (i.e., nonrenewal of the contract or immediate cancellation of the contract). In exchange for entering into these contracts, the land and any living improvements (trees and vines) are valued according to their income earning ability. The valuation is based on a statutory formula (outlined in RTC Section 423) that capitalizes the income the land is capable of producing from its agricultural use.

Generally, to immediately cancel a Williamson Act contract, a cancellation fee of 12.5% of the land’s fair market value is imposed. However, the cancellation fee can be waived in certain instances. The county assessor is responsible for determining the cancellation valuation of the land for purposes of the cancellation fee. (Government Code Section 51283)

Annual Assessment: Lowest of Three Values. The law provides that each year, property under a Williamson Act contract will be assessed at the lowest of three values:

- Williamson Act value (RTC Section 423)
- Current fair market value (RTC Section 110)
- Factored base year value (RTC Section 110.1)

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Thus, landowners participating in the Williamson Act program are guaranteed that land under contract will not be assessed at a greater value than had they not entered the program.

PROPOSED LAW

Solar-use Easements. This bill allows property owners and counties or cities that are currently parties to a Williamson Act contract to mutually agree to rescind the contract on parcels of land meeting certain criteria and simultaneously enter into a “solar-use easement” which the bill creates by adding Chapter 6.9, entitled “Solar-Use Easement,” to Part 1 of Division 1 of Title 5 of the Government Code (GC).

The solar-use easement serves to restrict the use of the land to:

- photovoltaic solar facilities for the purpose of providing for the collection and distribution of solar energy for the generation of electricity, and any other incidental or subordinate agricultural, open-space uses, or
- other alternative renewable energy facilities.

The Department of Conservation, in consultation with the Department of Food and Agriculture, determines whether parcels are eligible for rescission from a Williamson Act contract and placement into a solar-use easement. The criteria for a parcel to be eligible is:

- the land consists predominately of soils with significantly reduced agricultural productivity, as specified, or the land has severely adverse soil conditions, as specified, and
- the parcel is not located on specially designated areas of Important Farmland Series maps, as specified.

County Assessor Provisions. With respect to the property tax and the county assessor, this bill:

- Expressly provides that a “solar-use easement” is an enforceable land use restriction for which the assessor must consider its effect upon the value of the land for assessment purposes. *RTC §402.1(a)(9)*
- Provides that parcels subject to a solar-use easement are to be assessed pursuant to RTC §402.1 during the term of the easement. *GC §51191.7*
- Requires the clerk of the governing body accepting or approving the easement to provide the assessor with a copy of the instrument creating the solar-use easement. *GC §51191.6*
- Requires the assessor to determine the fair market value of land as though free of the easement restriction for purposes of determining the rescission fee. The rescission fee is 6.25% for property in the Williamson Act (12.5% for property in a farmland security zone.). *GC §51255.1(c)*
- Requires the assessor to determine the fair market value of a parcel as though free of the easement restriction should the landowner subsequently seek termination of the easement, for purposes of determining a solar-use easement termination fee. The termination fee is 12.5% of the property’s then fair market value. *GC §51192.2(b)and (c)*

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Annual Assessment: Lowest of Two Values. The creation of the solar-use easement would not result in a reduction of the base year value of the land. This is because most easements do not meet the change in ownership test in RTC Section 60 and therefore remain taxable to the property owner. However, a solar-use easement would need to be considered when determining the legally permissible highest and best use of the property or for appraisal purposes for annual lien date valuation.

Thus, in practical application, property under a solar-use easement will be assessed at the lower of two values as of each lien date:

- Current fair market value as impacted by the easement (RTC §§110 and 402.1)
- Factored base year value (RTC §110.1)

IN GENERAL

Creation of Easement. The BOE has generally held that the creation of an easement is not a change ownership of the property subject to the easement and the easement remains taxable to the property owner. Specifically, Assessors' Handbook Section 501 "Basic Appraisal" at Page 50, Part I, reads:

There are no change in ownership statutes or rules dealing specifically with the private grant of an easement or right of way from one landowner to another. Although an easement or right of way generally does not constitute "a transfer of value substantially equivalent to the fee" to the benefited person, as discussed in Chapter 3, courts have determined that a recorded permanent transfer of a present beneficial property right from one parcel to another can be a reassessable event. (*Mitsui Fudosan, Inc. v. Los Angeles County*, 219 Cal.App.3d 525.). Where the agreement between the property owners documents a recorded permanent grant of an appurtenant easement that includes present beneficial interests in that property described that are in fact substantially equivalent to the value of the fee, it qualifies as a change in ownership of the easement transferred, per section 60. Most easements do not meet the change in ownership test in section 60 and therefore remain taxable to the property owner; however, they may need to be considered when determining the legally permissible highest and best use for appraisal purposes.

Further, relevant to this bill in regards to conservation easements, Assessors' Handbook 521 "Assessment of Agricultural and Open-Space Properties" at Page 17, Part I reads:

Despite a conservation easement's legal status as an interest in real property, the conveyance of such an interest does not generally constitute a change in ownership of the property subject to the easement, where the primary purpose of the easement is the mere right to enforce *restrictions* (i.e., negative covenants) against the grantor. This is because, in such a case, with respect to the property subject to the easement, the conveyance would constitute neither a transfer of the beneficial use nor a transfer of an interest with a value substantially equivalent to that of the fee. Revenue and Taxation Code section 60 requires that a conveyance satisfy both conditions in order for a change in ownership to occur.

Effect of Use Restrictions on Property Value. With respect to the issue of valuing a property subject to an easement that restricts a property's use, Assessors' Handbook 521 "**Assessment of Agricultural and Open-Space Properties**" at Page 18, Part 1 reads:

While an easement created pursuant to Civil Code section 815.1 may not give rise to a change in ownership, the restrictions on use are considered enforceable restrictions for purposes of section 402.1, which provides that the assessor must consider the effect upon value of such restrictions. As a practical matter, the majority of conservation easements will be treated for assessment purposes in accordance with section 402.1.

Under section 402.1, the creation of a conservation easement does not result in an automatic reduction in the assessed value of the property subject to the easement. Instead, the assessor must enroll the lower of (1) the existing factored base year value or (2) the current market value considering the restrictions on use imposed by the easement. Only upon a subsequent change in ownership would the assessor establish a new base year value that accounts for the restrictions under the easement.

COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this bill to provide an additional method for terminating a Williamson Act contract on land for which a solar facility is being proposed. There is some question of whether a solar facility qualifies as a "compatible use" of land under contract. While the Williamson Act recognizes the construction of electric facilities as a compatible use (GC §51238), opinions differ over whether a solar photovoltaic facility qualifies. To avoid uncertainty and potential litigation, some landowners and county officials have terminated the Williamson Act contract (and paid the cancellation fee) before proceeding to build. In other cases, the cancellation fee was waived based on a finding that it was in the public interest to do so. The purpose of this bill is to provide an additional method to terminate a Williamson Act contract in addition methods already authorized under the law.
2. **The Solar-Use Easement Itself.** Generally, most easements do not meet the change in ownership test under the law and therefore remain taxable to the property owner. In practical terms, this means that the act of entering into an easement restricting the future use of the property would not result in any reduction in the current property owner's base year value.
3. **Effect of Use Restrictions on Property Value.** This bill expressly provides that the solar-use easement is to be considered an enforceable restriction under RTC Section 402.1. This means that for each lien date assessment, the assessor would value the property at the lower of its current market value (as impacted by the easement) or its factored base year value. Only upon a subsequent change in ownership would the assessor establish a new base year value that accounts for the restrictions imposed under the easement

4. **Removal of the Property from the Williamson Act.** Removal of a property from the Williamson Act does not result in an immediate increase in its assessed value. The value for property tax purposes would be adjusted for the next fiscal year's taxes. Specifically, for the next lien date (January 1) following cancellation, the lower of two values would be enrolled as the basis of the tax bill prepared for the upcoming fiscal year, either: (1) its factored base year value (i.e., Proposition 13 protected value) or (2) current market value as impacted by the easement as noted above. Thus, once property is removed from the Williamson Act, if the basis of the prior assessment was the Williamson Act capitalization of income method, the property taxes could increase. Furthermore, the easement would not result in a reduction of property taxes unless the current market value of the property as impacted by the easement is less than the property's factored base year value.
5. **Assessor's Task in Fee Calculation: Williamson Act Cancellation Fee and Solar-use Easement Rescission Fee and Termination Fee.** When a Williamson Act contract is cancelled, assessors are required to determine the current market value of the land as though it were free of contractual restrictions (GC Section 51283) for purposes of the basis of a cancellation fee. The cancellation fee is 12.5% of the value (25% in the case of a farmland security zone). This bill similarly requires the assessor to determine the current market value of the land as the basis for the newly created "rescission fee" of 6.25% of value (or 12.5% in the case of farmland security zone). Additionally, should a property owner wish to terminate the solar-use easement in the future, the assessor would be required to determine a value for the basis of the "termination fee" of 12.5% (or 25% in the case of a farmland security zone).

COST ESTIMATE

Enactment of this bill would not materially affect the BOE's administrative costs.

REVENUE ESTIMATE

There would be no immediate revenue impact for property removed from the Williamson Act. However, for the following lien date for the next fiscal year, property tax revenues on these lands could increase for lands that had been previously assessed under the Williamson Act because it provided the lowest possible assessed value. The property would either revert to its Proposition 13 protected value (factored base year value) or be assessed at its current market value as impacted by the easement.

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